

EXHIBIT 3

1 UNITED STATES DISTRICT COURT,
2 EASTERN DISTRICT OF MICHIGAN,
3 SOUTHERN DIVISION

4 Leda Reed, as the Personal
5 Representative of the Estate of
6 Anthony Demone Clark-Reed

7 Plaintiff,

8 vs.

Hon. Linda Parker
Case No. 18-10427

9 The City of Detroit, a Michigan
10 Municipal Corporation,
11 Officer Tracy Moreno,
12 Officer Robin Carver,
13 Officer Eric Carthan, in their
14 official capacities and individually,
15 Jointly and Severally,

16 Defendants.

17 DEPOSITION OF POLICE OFFICER TRACY MORENO,

18 Taken by the Plaintiff on the 9th day of January, 2019,
19 at the offices of City of Detroit Law Department, at
20 Suite 500, CAYMC, 2 Woodward Avenue, Detroit, Michigan,
21 at 11:00 a.m.

22 APPEARANCES:

23 For the Plaintiff:

Mr. Herbert A. Sanders - P43031
The Sanders Law Firm
615 Griswold St., Ste. 913
Detroit MI 48226
(313) 962-0099
haslawpc@gmail.com

24 For the Defendant:

Ms. Crystal B. Olmstead - P69202
City of Detroit Law Dept.
2 Woodward Avenue, Suite 500
Detroit MI 48226
(313) 237-5051
olmsteadc@detroitmi.gov

25 Reported by:

Shalaan K. Fisher, CSR-2284
(313) 881-3380

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Detroit, Michigan

Wednesday, January 9, 2019

11:00 a.m

- - -

POLICE OFFICER TRACY MORENO,

HAVING BEEN CALLED BY THE PLAINTIFF AND SWORN:

CROSS-EXAMINATION

BY MR. SANDERS:

Q Let the record reflect that this is the deposition of Police Officer Tracy Moreno, taken pursuant to Notice, to be used for all intents and purposes in the United States District Court for the Eastern District of Michigan, Southern Division, case number: 18-10427, Leda Reed, et al versus City of Detroit, et al.

Good morning, Officer Moreno.

A Good morning.

Q I'm going to ask you a series of questions as it relates to the lawsuit that I just referenced. If at any time you don't understand my question, please indicate so, and if you need, I can rephrase or repeat the question. To the extent you do give an answer, I will presume that you did understand the question. I don't anticipate that we will be very long, however, if at any time you would like to take a break, let me know and I would be happy to accommodate that.

1 I would ask that if there is a question
2 pending, you would answer the question before we break,
3 okay?

4 A All right.

5 Q Excuse me. I'm sure, you testified before. So, I'm
6 sure, you understand that I need you to give verbal
7 responses to my inquiries. To the extent you do as we
8 all occasionally do respond to the question by nodding
9 your head, shaking your head, saying "hm-hmm,"
10 "unh-unh," there is a potential that it won't be
11 recorded appropriately by the Court Reporter.

12 A Understand.

13 Q All right. Would you state your full name for the
14 record?

15 A Tracy Lee Moreno.

16 Q And what is your date of birth?

17 A March 4th, 1985.

18 Q How long have you been employed with the City of
19 Detroit?

20 A Since 7-Eleven of '08.

21 Q And when you first became employed with the City of
22 Detroit, was that in the capacity of a Police Officer?

23 A I was in the Detroit Police Academy --

24 Q Okay.

25 A -- as a student Police Officer.

1 Q Okay. Have you ever held any other title or position
2 with the City of Detroit other than Police Officer?
3 A No.
4 Q What is your current rank?
5 A I'm a Police Officer.
6 Q And what is your current assignment?
7 A Fourth Precinct.
8 Q Patrol?
9 A Special Operations for the Fourth Precinct.
10 Q What does that mean?
11 A Special Operations, it's a pro-active unit. It usually
12 --
13 Q It usually what?
14 I am -- or sorry. I didn't hear you.
15 A Out of service.
16 Q What does out of service mean?
17 A Normally, we do not handle police runs unless it
18 involves some sort of robbery or shooting.
19 Q What does Pro-active Unit mean?
20 A We are looking for narcotics, gang activity, weapon
21 offenses.
22 Q Did you review anything in preparation for your
23 deposition today?
24 A I looked at my report that I prepared for this
25 incident.

1 Q Did you review anything else?

2 A I reviewed a video of the stop.

3 Q Anything else?

4 A No.

5 Q I believe, the date of the occurrence was on or about
6 March 30th, 2015.

7 Was that accurate to the best of your
8 recollection?

9 A I believe so.

10 Q What capacity were you working in on that day?

11 A I was working Special Operations Code 433.

12 Q And what does that mean?

13 Is that what you previously described to me?

14 A Yes.

15 Q Okay. So, it was the same?

16 A Same job function.

17 Q Same job function. All right.

18 What does Code 433 --

19 A Car #33 from the Fourth Precinct.

20 Q Now, you said that in that capacity, you are looking
21 for narcotics gangs, weapons.

22 Explain to me how you are doing that or
23 performing that function.

24 A Well, from our observations, sometimes we drive down
25 the street. We can see hand-to-hand transactions or

1 investigate for traffic offenses and conduct street
2 investigations.

3 Q So, do I understand by your testimony that part of your
4 function in the capacity of a Special Ops. Officer is
5 to look for traffic violations and investigate traffic
6 violations?

7 A It's still part of the laws. Yes.

8 Q I'm sorry?

9 A Yes.

10 Q And pursuant to looking for traffic violations, do I
11 understand, your testimony would be that you would be
12 pursuant to a traffic stop seeking to find narcotics
13 and/or weapons violations?

14 A If the investigation lead that way. Yes.

15 Q But that was your function in the capacity that you
16 were serving, correct?

17 A I'm sorry.

18 Q I guess, I'm having a problem distinguishing your
19 capacity on that day from that of a regular Patrol
20 Officer.

21 Can you help me with that distinction?

22 A I guess, you could say, my primary function would be to
23 do those weapon, narcotics, wanted person
24 investigations, and yes, I can use traffic to do that.

25 Q Okay.

1 A If that --

2 Q And how would you use traffic to do that?

3 A You would stop people pursuant to defective plates,
4 lamps, taillights, failing to use turn signals, tinted
5 windows, disregarding stop signs or red light.

6 Q Okay.

7 A That gives you the legal stop.

8 Q And then what?

9 A Depends on the observations.

10 Q So, in other words, you are looking for a legal basis
11 in which to stop individuals and then based upon your
12 observations, you are attempting to investigate whether
13 or not they have committed other crimes such as a
14 weapons or narcotics offense; would that be accurate?

15 A That's possible. Yes.

16 Q That's possible, or is that accurate?

17 A I would say, it's accurate.

18 Q I'm looking at your report, which I believe, you
19 indicated, you previously reviewed, and as you
20 testified, it says Scout 433 in marked scout car.

21 Can you describe to me the vehicle you were in?

22 What does it mean when it says, "marked Scout
23 car"?

24 Is that a car that had lights on the top of it
25 and "Detroit Police" written on the side or is it a --

1 one of the black vehicles that we might be familiar
2 with that has lights on the front?

3 What were you in?

4 A On that particular day, we were using the traffic
5 vehicle. I can't remember the code of that vehicle,
6 but you do know, it was a white Ford, Crown Victoria.
7 It had "Detroit Police" on both, the driver's side door
8 and passenger's side front door. I believe, it may
9 have said, "Traffic Enforcement" on one of the -- or
10 both of the front quarter panels. It did have lights
11 that were inside the vehicle as opposed to a light-bar
12 on top.

13 Q And refresh my memory: Were you the driver on that
14 day?

15 A I was.

16 Q If I'm not mistaken, your encounter with the Decedent
17 was at or about 9:00 p.m.

18 Was that accurate?

19 Does that refresh your recollection?

20 A I believe, it was a little closer to 9:30, but yes.

21 Q And what time did your shift begin on that day?

22 A I believe, 7:00 p.m.

23 Q Now, your report indicates that you were in a modified
24 uniform.

25 What does that mean?

1 A Typical patrol uniform is the blue shirt, blue pants.
2 At that time, I can't remember if we had gone to the
3 felt patches or the -- or still had a name tag and
4 badge affixed. Special Operations Uniform is black
5 Polo shirt, short or long sleeve, and green cargo
6 pants.
7 Q With the shirt, was your badge sewn onto the shirt?
8 A Yes. Name. Name, badge number. It's a belt badge,
9 patch, I guess, you could say.
10 Q And how were you equipped?
11 A Can you further explain your question?
12 Q Sure. Did you have handcuffs?
13 Did you have firearm on you?
14 What other type of equipment, if any, did you
15 have?
16 A I had my duty belt -- duty belt which had department
17 issued side arm, handcuffs, pepper spray and a radio.
18 Q What type of firearm did you have?
19 A I believe, we had made the transition Smith and Wesson,
20 M & P40.
21 Q Now, there were two other officers in the vehicle with
22 you, correct?
23 A Correct.
24 Q Okay. Other than the weapons that the other officers
25 may have had on their person, did you have any other

1 weapons in the vehicle?

2 A No. Maybe, a shotgun in the trunk. I can't recall.

3 Q Now, would it be accurate that at the time you
4 encountered the Decedent, he was traveling west on
5 Vernor Street?

6 A The first time I viewed him, he was actually stopped at
7 a stop light, facing west.

8 Q Okay.

9 A On Vernor at --

10 Q At what?

11 A At Mullane, M-u-l-l-a-n-e.

12 Q Okay. He was at the stop light, heading west on
13 Vernor. I assumed, the light was red for him, and he
14 was stopped at that light.

15 Would that be accurate?

16 A That is correct.

17 Q Okay. Would it be also accurate that you were driving
18 east on Vernor when you first observed him?

19 A No.

20 Q Which direction were you headed?

21 A I was on Mullane Street travelling north. I made a
22 right turn, heading east on Vernor, at which time, I
23 observed his vehicle with the tinted windows and I made
24 a U-turn behind him.

25 Q And what about observing his vehicle with tinted

1 windows caused you to make a U-turn?

2 A The tinted windows on the front two windows,
3 specifically, the driver's side window which is what I
4 could see is in violation of city and state ordinance
5 which is that only the top 4" can be tinted whereas his
6 entire window was tinted.

7 Q You observed --

8 Well, was this a two-door or four-door car?

9 A Four.

10 Q And you made an observation of the driver's side
11 windows and which window are you maintaining was not in
12 compliance with the law?

13 A Driver's side. Driver's side front window.

14 Q And what degree of tint did this window allegedly have?

15 A I'm not a tint expert. It was tinted more than the top
16 4" which is in violation.

17 Q It was tinted more than the top 4", so, are you saying,
18 the window below 4" was darker than the window at the
19 top?

20 A The entire window was tinted, I don't know what
21 percentage, I guess, you could say, is the tint. I'm
22 not familiar with tints.

23 Q Okay. And based upon -- well, reviewing the report and
24 taking Eric Carthan's deposition, would you agree with
25 me that you, nor anyone else had any device in which to

1 measure the tint on the windows?

2 A I know that an entire window is more than 4" and if an
3 entire window is tinted, it is in violation. So, I did
4 not need to measure it.

5 Q Just answer the question.

6 A I'm sorry.

7 Q What I need is -- and I'm not talking aobut the number
8 of inches that may have been tinted, I'm asking, did
9 you have any device in which to measure the degree of
10 the tint of the windows?

11 A No.

12 Q And you have no idea what degree the tint of that front
13 passenger window was, correct?

14 A The front passenger window?

15 Q The front driver's side window. Excuse me.

16 A No. I don't know what degree it was.

17 Q Okay. And do you have any knowledge as to what degree
18 of tint would be considered illegal?

19 A Degree, no.

20 Q You would agree with me that having a driver's side
21 front tinted window, as you have described, is a civil
22 infraction?

23 A That's correct.

24 Q And what is the penalty for that civil infraction?

25 A I'm not sure what the fine is. I know, it is a fine.

1 Whether it's a --

2 MS. OLMSTEAD: Just answer the question he is
3 asking you.

4 THE WITNESS: It's a fine.

5 BY MR. SANDERS:

6 Q Is it an arrestable offense?

7 A No.

8 Q Now, it's my understanding that you made a U-turn and
9 got behind the charger; is that accurate?

10 A That's correct.

11 Q From your report, it appears as though once you got
12 behind the charger that you did not immediately
13 activate your light and/or siren.

14 Is that accurate?

15 A That's correct.

16 Q At the time you got behind the charger, was the light
17 still red heading west on Vernor?

18 A Correct.

19 Q All right. How long were you behind the charger while
20 the light was red?

21 A I can't say for sure. No more than a minute, maybe.

22 Q What is the speed limit on Vernor?

23 A In that area, I believe, it's 30.

24 Q Now, the charger, I presume, the light turned green at
25 some point?

1 A Correct.

2 Q And the charger began to pull away.

3 Would that be accurate?

4 A Correct.

5 Q How long after the charger began to pull away did you
6 activate your siren and/or lights?

7 A Within three to five seconds. I waited for us to clear
8 the intersection.

9 Q Before the charger pulled away from the red light, how
10 close were you to the vehicle?

11 A I'm sorry.

12 Q Before the charger pulled away from the green light,
13 how close were you to the vehicle?

14 A We were right behind it. I was not on it's bumper, but
15 --

16 Q Was there a car lane, two car lanes between?

17 A I would say, maybe, ten feet.

18 Q Now, did you initially activate your lights or your
19 siren?

20 What did you initially do?

21 A I initially activated the lights.

22 Q And what does that consist of?

23 A There is a toggle switch in the car, and I moved it all
24 the way over, so, all the lights would activate.

25 Q And I believe, you have already testified to this, but

1 again, could you describe for us once you quote,
2 unquote (sic) activate the lights, what is going on
3 with the car?

4 Where are these lights and what are they doing?

5 A They are on that particular vehicle, lights all along
6 the top of the windshield, red, blue and white. The
7 lights in the head headlights and turn signal area also
8 flash back and forth and the rear of the vehicle is
9 very similar.

10 Q At that time, when you activate the lights, how close
11 are you to the charger?

12 A Maybe, a half car length to a car length.

13 Q How many lanes are there on Vernor?

14 A One lane each way and a parking lane on the side.

15 Q So, I would presume, the charger was in the driving
16 lane; not the parking lane at the time it was at the
17 red light?

18 A Correct.

19 Q And after you -- Well, were there cars parked along the
20 parking lane?

21 A I can't recall. There may have been.

22 Q Do you recall any particular businesses or landmarks
23 that were along in that area?

24 A There is a school right there, at Vernor and Mullane
25 where the red light is. It just changed, but there was

1 a CVS right near that corner and an O'Reilly's on the
2 corner, across the street and that as you continue
3 westbound, there is a liquor store right there, on
4 Lawndale, Vernor and Lawndale and some apartments and
5 libraries, a library.

6 Q You said, the liquor store was on Vernor and --

7 A The liquor store is just at Vernor and Lawndale,
8 L-a-w-n-d-a-l-e.

9 Q The charger pulls away from the green at the
10 intersection when the light turns green. You testified
11 that the first thing you do thereafter is activate your
12 lights.

13 How long after activating your lights do you
14 activate your siren or do you activate your siren?

15 A I activated the siren and probably had gone about a
16 block-and-a-half. When the vehicle did not stop, I
17 activated my siren.

18 Q From the time you activated your lights until the time
19 you activated your siren, did the vehicle change lanes?

20 A No.

21 Q Would it be accurate that during that stint in time,
22 the vehicle was driving at the speed limit or less?

23 A That's accurate.

24 Q Would it be accurate that from the time in which you
25 activate your lights, the vehicle did not attempt to

1 elude you?

2 A I can't be sure, because it did not stop for about six
3 blocks, and I know, within that six blocks, he could
4 have pulled over at any time.

5 Q Is it possible that he did not know that it was him,
6 you were seeking to pull over?

7 A We were the only cars. Traffic was very light and we
8 were directed behind him.

9 Q Couldn't activating your lights mean that you are
10 attempting to make a run somewhere else?

11 A Yes.

12 Q Could activating your lights mean that there is some
13 hazard that you have become aware of on the road?

14 A Yes.

15 Q But he didn't accelerate, correct?

16 A Not excessively. No.

17 Q Not above the speed limit, correct?

18 A Correct.

19 Q He didn't turn down any side streets, correct?

20 A Correct.

21 Q All right. Now, after you activate your lights, would
22 it be accurate that pursuant to your police report, you
23 can clearly see inside the vehicle?

24 MS. OLMSTEAD: Objection. I'm just going to
25 say that it lacks foundation, but you can answer the

1 question, if you can.

2 THE WITNESS: Can you repeat that?

3 BY MR. SANDERS:

4 Q Let me just characterize and say, any question I ask
5 you, I only want you to answer it if you can.

6 A Okay.

7 Q You know, sometimes we use that as code words that
8 says, "Don't answer the question."

9 If you can, there is not a --

10 "I don't want you to answer."

11 MS. OLMSTEAD: I'm just going to place an
12 objection on the record as to Counsel's
13 characterization and attempt to --

14 In my opinion --

15 Let's move on. Go ahead.

16 BY MR. SANDERS:

17 Q I don't want you to answer any question if you can't
18 answer the question. I'm anticipating, you are going
19 to say, "I don't know," or "I don't..." -- I cannot
20 answer the question.

21 A Could you reask your question?

22 I'm sorry.

23 Q Sure. You could clearly see within the vehicle once
24 you got behind the charger, correct?

25 A Clearly?

1 No.

2 Q You made some observations in your report as to what
3 was allegedly going on inside the vehicle; is that
4 accurate?

5 A Yes.

6 Q So, you saw well enough to make observations as to what
7 you believe was going on inside the vehicle, correct?

8 A Yes.

9 Q Do you have an opinion as to whether --

10 Let me ask you this: The observations that you
11 made as it relates to what was going on inside of the
12 vehicle, through what window did you observe that
13 activity?

14 A The rear windshield.

15 Q Do you have an opinion as to whether or not the rear
16 windshield was the same tint as the side window that
17 caused you to pull the vehicle over, darker or lighter?

18 A I can't answer that, because I don't know.

19 Q Do you have an opinion as to whether or not the rear
20 window was an illegal tint?

21 MS. OLMSTEAD: Asked and answered.

22 MR. SANDERS: That's a different question.

23 THE WITNESS: As the rear window is concerned,
24 I don't know.

25 BY MR. SANDERS

- 1 Q Once you get behind the vehicle, what, if anything, do
2 you observe in going on inside the vehicle?
- 3 A I was able to use my spotlight to flash or to
4 illuminate or to attempt to illuminate the vehicle
5 also.
- 6 Q All right. Let me ask you a question about that.
- 7 A I'm sorry.
- 8 Q You turned on a spotlight to illuminate the vehicle
9 when?
- 10 A When the vehicle did not stop, I couldn't tell you.
11 I'm not sure if it was the second block, third block,
12 but --
- 13 Q Okay. So, the stop light was not turned on before the
14 lights that you would put on that you described, a red,
15 white and blue?
- 16 A Correct.
- 17 Q Okay. The stop light or the -- Excuse me. The
18 spotlight was not turned on before the siren was turned
19 on, correct?
- 20 Or was it?
- 21 A I can't recall. I believe, the siren was first.
- 22 Q And then based upon your belief and recollection, the
23 spotlight was turned on and what, if any, observation
24 did you make?
- 25 A I was able to see a shadow from inside of the vehicle,

1 a silhouette, if you would, of reaching motions coming
2 from the driver's seat over toward the passenger area
3 of the vehicle.

4 Q Did you observe anything else?

5 A It looked that he -- the driver had done this at least
6 three to four times before pulling over.

7 Q Anything else you observed?

8 Did you observe anything else?

9 I just want to make sure, I have exhausted your
10 recollection as to what you observed when you were in
11 your vehicle, behind the charger.

12 A Just the reaching motions, several reaching motions
13 several times over to the passenger compartment. Like
14 I said, I only saw a shadow.

15 Q All right]. And when you say, the "passenger
16 compartment," I assume, you are referring to what might
17 be commonly known as the "glove compartment"?

18 A I can't say for sure.

19 Q Okay.

20 A But the passenger's side of the vehicle.

21 Q To the passenger's side of the vehicle?

22 All right. At some point, the vehicle comes to
23 a stop, the charger; is that accurate?

24 A Yes.

25 Q All right. And did it come to a stop in the driving

1 lane or in the parking lane?

2 A Parking lane.

3 Q So, would it be accurate that the vehicle was legally

4 parked?

5 A At that time, yes.

6 Q After the vehicle comes to a stop, what happens next?

7 A I, along with my partners exited our vehicle. We began

8 to approach.

9 Q Was your weapon drawn?

10 A No.

11 Q What happens next?

12 A I shout verbal commands to the person inside the

13 vehicle, the driver.

14 Q What was your verbal command that you shouted?

15 A To put all the windows down.

16 Q Did he comply?

17 A Yes.

18 Q Where were you at when you were giving these commands?

19 A Near the front, the front tire, quarter panel of my

20 vehicle.

21 Q Where were your partners?

22 A They were -- Officer Carver was on the passenger's side

23 of our vehicle near the front half and I'm not exactly

24 sure where Officer Carthan was at the time, but he was

25 behind both of us, I can tell you.

1 Q Now, you have shouted a command to roll down the
2 window. You indicated, he complied.

3 What next?

4 A I slowly began to approach the vehicle, still giving
5 verbal commands.

6 Q What verbal commands were you giving as you approached
7 the vehicle?

8 A I asked the driver to place his hands on the back of
9 his head and interlock his fingers.

10 Q Did he comply?

11 A At first.

12 Q What happened next?

13 A I began to approach, and as I approached, the driver
14 moved his right hand down, out of view. So, I stopped
15 and gave verbal commands, again.

16 Q And you gave a verbal command to do what?

17 A To place his hands on the back of his head.

18 Q What happened next?

19 A He put his hands on the back, both hands on the back of
20 his head.

21 Q Then what happened?

22 A I again slowly approached the vehicle.

23 Q Where were you at when you gave the second verbal
24 commands to place your hands on the back of your head?

25 A I was about the rear tire of his charger.

- 1 Q Okay.
- 2 A Rear driver's side tire.
- 3 Q You then approached the vehicle and what happened next?
- 4 A I made contact with the driver.
- 5 Q Okay. So, when you made contact with the driver, would
- 6 it be accurate that you were at the driver's side door?
- 7 Would that be accurate?
- 8 A Pretty close to it. Yes.
- 9 Q What is the lighting on the street at this time?
- 10 A It's -- the sun was setting. It was dark lighted. The
- 11 sun was going down to the west.
- 12 Q Was there a street light in the area?
- 13 A I believe so.
- 14 Q Okay. And did you still have your spot light on the
- 15 vehicle?
- 16 A Yes.
- 17 Q So, would it be accurate that at that moment when you
- 18 are standing next to the vehicle and the driver is
- 19 there with his hands on his head, that you can clearly
- 20 see inside the vehicle?
- 21 A Using a flashlight, yes.
- 22 Q Did you have a flashlight?
- 23 A Yes.
- 24 Q Did you use your flashlight?
- 25 A Yes. I believe so.

1 Q Did you look inside the vehicle?
2 A I was more focused on him at the time.
3 Q Okay.
4 A I was looking at the driver.
5 Q All right. Did you look inside the vehicle?
6 A Just the driver.
7 Q All right. So, you made no observation as to their
8 surroundings, but kept your eyes pinned on his head?
9 A Hands and head for the most part.
10 Q On his hands and his head, and his hands were on his
11 head?
12 A Correct.
13 Q And you had your flashlight shining where?
14 A In his direction. It was -- It's a pretty big beam, so
15 --
16 Q Okay. In his face?
17 A No. From behind.
18 Q From behind?
19 A Yes.
20 Q All right. Where are your partner's at this time?
21 A The passenger's side of his vehicle.
22 Q And when you say, "passengers side," at the front of
23 the vehicle or the rear of the vehicle?
24 A I believe, the side doors near the passenger's side
25 doors.

1 Q Passenger's side doors, so that would be the front
2 passenger's side and the rear passenger's side; is that
3 accurate?
4 A That would be accurate.
5 Q Okay. Did your partners have their flashlights, also?
6 A Yes.
7 Q And where would their flashlights shine?
8 A I can't answer that.
9 Q All right. If you had been in their position, where
10 would your flashlights have been shining?
11 A All throughout the vehicle.
12 Q All right. And what would the purpose of them standing
13 on the side of the vehicles have been while you were
14 standing next to the driver's side?
15 A Providing cover for me.
16 Q And as they shine their flashlights all throughout the
17 vehicle, what would they be looking for, if anything?
18 A Weapons and/or narcotics.
19 Q And would it be accurate that through their observation
20 and your observation of the vehicle, there were no
21 weapons and/or narcotics found?
22 A I'm sorry. Say that, again.
23 Q Sure. There are three officers standing next to the
24 vehicle. You are at the driver's side with your
25 flashlights shining inside, two other officers with

1 their flashlights shining inside.

2 My question is did either of you see any
3 weapons or narcotics?

4 A I do not believe so.

5 Q And we are still at the point that this person is being
6 pulled over for a civil infraction, correct?

7 A Correct.

8 Q All right. What happens next?

9 A Due to his action, of him reaching over to the
10 passenger's side compartment of the vehicle and --

11 Q Okay. Go ahead. I'm sorry.

12 A And him not stopping for six blocks and his inability
13 to comply with my verbal commands of keeping his hands
14 behind his head, I had him step out of the vehicle.

15 Q You just described some things that you say caused you
16 to have him step out of the vehicle.

17 Did any of those things you described
18 constitute a crime?

19 A No.

20 Q Which streets were you between at the time the vehicle
21 stopped?

22 A Lawndale and Cabbot.

23 (At 11:33 a.m., Plaintiff's Exhibit #1 was
24 marked for identification.)

25 Q I would like to show you what has been marked as

1 Deposition Exhibit #1.

2 Can you take a look at that?

3 MS. OLMSTEAD: Do you have copies for me?

4 MR. SANDERS: No. I don't. I'm sorry.

5 Do you mind sharing or do you want to take a
6 break and make a copy?

7 MS. OLMSTEAD: Yes. I'll take a break.

8 (At 11:34 a.m., a break was taken.)

9 BY MR. SANDERS:

10 Q Okay. Are you familiar with that document?

11 A It is the first time seeing this document, but it's a
12 map.

13 Q Okay. And are you familiar with the area that appears
14 to be a map of?

15 A Yes.

16 Q Does it appear to be an accurate map?

17 A That is what I'm looking at, but yes.

18 Q Okay. If you see Vernor Highway, correct?

19 A Hm-hmm.

20 Q And you see Lawndale Street, correct, which intersects
21 with Vernor?

22 A Hm-hmm.

23 Q All right. Can I ask you to draw on the map an arrow
24 and pointing which way west would be?

25 Do you need a pen?

1 You got it?

2 A Points which way?

3 West is --

4 Q Yes. Now, can I ask you to mark an "A" where the
5 charger was when it was sitting at the red light and
6 you were sitting behind it?

7 And then can I ask you to mark a "B" where the
8 charger ultimately pulled over?

9 Can I take a look at what you have done?

10 Do you want to take a look now?

11 MS. OLMSTEAD: Is this -- I don't even see any
12 marks, okay?

13 THE WITNESS: See, right here, A and B?

14 MS. OLMSTEAD: Okay.

15 BY MR. SANDERS:

16 Q Now, I believe when we last left off and we were
17 discussing, you and your partners were out of the
18 vehicle. I had your flashlights shining within the
19 vehicles. You had already given a command to roll down
20 all the windows and place your hands on your head?

21 A Correct.

22 Q What happened next?

23 A After the verble commands were given for him to place
24 his hands on his head and he had moved his hands back
25 -- his right hand back down, I gave him a second verbal

1 command to put it back.

2 Q Did he comply?

3 A Yes.

4 Q But then you testified about that.

5 What happened next?

6 A He did one more time where he just moved his right
7 hand, so, I had to tell him the second time to put it
8 back.

9 Q Okay. And where were you at when this was occurring?

10 A Closing distance from the back rear tire of the charger
11 to the door.

12 Q All right. Well, I want to talk about now from the
13 point in which you are, I believe, at the driver's side
14 window, all right?

15 When you are at the driver's side window, his
16 fingers are in an interlock and his hands are on his
17 head, right?

18 A Correct.

19 Q What happens next?

20 A I did see that the driver was a very large individual.

21 Q When you say, "very large," how would you describe him?

22 Would you agree with me, he was over 300
23 pounds?

24 A Yes.

25 Q Morbidly obese?

1 A Yes.

2 Q What happens next?

3 A I had him step out of the vehicle.

4 Q All right. So, this 300 pound man has his hands on his
5 head and he is getting out of a charger?

6 A I'm sorry. Can I backtrack?

7 Q Okay.

8 A I had him shut the vehicle off.

9 Q You had him shut the vehicle off?

10 Now you have him step out of the vehicle while
11 maintaining his hands on his head; is that accurate?

12 A That is correct.

13 Q What happens next?

14 A I had him get onto the ground after he exited the
15 vehicle.

16 Q Okay. And his hands are still interlocked behind his
17 head; is that accurate?

18 A Yes.

19 Q All right. And when you say, you had him get on the
20 ground, how is he on the ground?

21 A First, he went to his knees and then onto his belly or
22 his stomach or chest.

23 Q And at this time, his fingers are still interlocked
24 behind his head; is that accurate?

25 A I believe, he might have had one hand out to lower

1 himself to the ground, but that was it.

2 Q You indicated in your report that he put one hand out
3 to lower himself to the ground?

4 A I don't believe so.

5 Q Okay. I don't believe so, either.

6 So, he goes to his knees and then he goes to
7 his stomach on the ground.

8 Then what happens next?

9 A I began to stand over him.

10 Q Okay.

11 A And I ended up taking his left and right hand, pulling
12 them back to his small of his back area, because he was
13 a very large individual. For a brief moment, I was on
14 him, going from left to right to secure his left and
15 right wrist with handcuffs.

16 Q Okay. What do you mean, you were on him?

17 A I might have sat on the small of his back area right
18 above the buttocks.

19 Q And you sit on the small of his back, above his
20 buttocks.

21 What happens next?

22 A He was handcuffed --

23 Q Okay.

24 A -- once.

25 Q Let me stop you right there.

1 During the process of you handcuffing him, he
2 requested that you give him his inhaler.

3 Isn't that accurate?

4 A Yes.

5 Q Okay. And would it be accurate that he was laboring to
6 breathe at that time --

7 A Not at that time.

8 Q -- in your observation?

9 A Correct.

10 Q So, before he is handcuffed, he indicates that he would
11 like his inhaler.

12 You continued to handcuff him, correct?

13 A Correct.

14 Q What happens next?

15 A After he was handcuffed, I, along with Officer Carthan,
16 assisted him in getting him back up to his feet. He
17 was not on the grounds more than five to eight seconds.
18 He was searched for weapons. None were found, and we
19 walked back to the passenger's side front tire of our
20 scout car.

21 (At 11:39 a.m., Plaintiff's Exhibit #2 was
22 marked for identification.)

23 Q I would like to show you what's been marked as
24 Deposition Exhibit #2.

25 Are you familiar with that document?

1 A This appears to be a copy of my report.

2 Q And it appears that there were some highlights made on
3 the report that alternately resulted in redactions when
4 the report was copied?

5 A Okay.

6 Q Do you agree with me?

7 A I'll agree with you.

8 MS. OLMSTEAD: Objection; lacks foundation.
9 Go ahead.

10 MR. SANDERS: I mean, Counsel, you would
11 stipulate that there are some redactions on the report,
12 correct?

13 MS. OLMSTEAD: I'm going to say, lacks
14 foundation. I'm not going to argue with you, but I'm
15 going to say, lacks foundations.

16 Who made the redactions?

17 Does he know what a redaction is?

18 I want to lay the foundation for that.

19 MR. SANDERS: I think, he knows who made it.
20 He answered the question. So, I assume, he knows what
21 it is. Remember what he first said. I said, if you
22 answer a question, my assumption is you understood the
23 question. So, all right.

24 MS. OLMSTEAD: Hm-hmm.
25

1 BY MR. SANDERS:

2 Q The first area where I see a redaction, I'm going to
3 begin to read that sentence that -- and I want you to
4 assist me to the best of your recollection of telling
5 you what that --

6 MS. OLMSTEAD: Can we -- Let me take a quick --
7 Sorry to interrupt. Is this copy of this document the
8 copy that you received from my office in response to
9 discovery request?

10 MR. SANDERS: I don't know.

11 MS. OLMSTEAD: Because if you need an
12 unredacted copy, this is an --

13 The issue I take with your line of questioning
14 as far as foundation --

15 MR. SANDERS: Sure.

16 MS. OLMSTEAD: I don't know where this came
17 from and you should not have received a redacted copy.
18 There is no reason for anything to be.

19 MR. SANDERS: Well, if you have a copy that is
20 not redacted, that would save us a lot of time.

21 MS. OLMSTEAD: You could have simply asked that
22 question, because you don't -- I don't know where this
23 came from, foundation. I don't know if your office did
24 this.

25 MR. SANDERS: We are at that point.

1 Do you have a copy that's not redacted?

2 MS. OLMSTEAD: I do.

3 MR. SANDERS: Can we have it?

4 MS. OLMSTEAD: That would have been a much
5 easier question rather than asking my officer these
6 questions.

7 MR. SANDERS: At that point, he has got to go,
8 I know. If you have it, that's fine.

9 MS. OLMSTEAD: 12A.

10 (At 11:42 a.m., a break was taken.)

11 We can go back on.

12 Just let the record reflect that the full
13 police report -- all police reports that were
14 previously provided and discovered at least twice are
15 now being provided, again, for the purposes of the
16 deposition unredacted.

17 MR. SANDERS: At least twice now. I don't know
18 about that now, okay?

19 What I am going to --

20 (At 11:42 a.m., Plaintiff's Exhibit #3 was
21 marked for identification.)

22 BY MR. SANDERS:

23 Q All right. I'm going to show you what's been marked as
24 Deposition Exhibit #3.

25 Are you familiar with that document?

1 A Yes.

2 Q All right. Would you agree or disagree that, that is
3 the same as Exhibit #2 except for the redactions?

4 A Correct.

5 Q All right. Now, I believe, you previously testified
6 that Mr. Reed, the Plaintiff Decedent had requested his
7 inhaler during the time and stint that you were
8 attempting to handcuff him; would that be accurate?

9 A Yes.

10 Q All right. It would also be accurate that he stated to
11 you, "I think, I'm having an asthma attack while you
12 were attempting to handcuff him?

13 Is that accurate?

14 A Yes.

15 Q All right. You have described him being -- walk back
16 to your vehicle and after helping him to his feet,
17 patting him and checking him for weapons and then
18 walking him back to your vehicle, you then asked
19 someone to provide you with his inhaler; is that
20 accurate?

21 A Correct.

22 Q Who did you make that request of?

23 A My partner, Officer Carver.

24 Q After making that request, what happened next?

25 A Officer Carver was able to find the inhaler from the

1 vehicle.

2 Q Do you know where he found it at?

3 A I do not.

4 Q What did the inhaler look like?

5 A I remember, it was gray.

6 Q Do you happen to suffer from asthma?

7 A No.

8 Q All right. Have you ever administered an inhaler to

9 anyone prior to this occurrence?

10 A Yes.

11 Q And whom would that have been?

12 A Myself.

13 Q And for what purpose?

14 A I had an upper respiratory infection and it was for

15 chest congestion.

16 Q Okay. And when was that?

17 A Sometime ago. I cannot -- years.

18 Q How many years prior to this occurrence?

19 A I can't tell you. I don't know exactly.

20 Q After Officer Carver gave you the inhaler, you then

21 showed it to Mr. Reed; is that accurate?

22 A Yes.

23 Q You then asked Mr. Reed, "Is this yours?"

24 Is that correct?

25 A Yes.

1 Q And Mr. Reed was unable to provide you a verbal
2 response. He simply nodded his head; is that accurate?

3 A He nodded his head in an up and down motion commonly
4 known as a "Yes."

5 Q Okay. You had observed prior to then that he was
6 laboring to breathe; would that be accurate?

7 A Correct.

8 Q And would it be accurate that before you asked your
9 partner to provide you with an inhaler, Mr. Reed had
10 made a second request to you for his inhaler?

11 A Correct.

12 Q You then administered the inhaler to Mr. Reed while he
13 was standing next to your vehicle and handcuffed behind
14 his back; is that accurate?

15 A Correct.

16 Q You say, you activated the inhaler.

17 What does that mean?

18 A I held the inhaler to his mouth. He put his lips
19 around the inhaler. I depressed the button, so, that
20 way, the medicine could exit the inhaler. I observed
21 him inhale. I waited another two, three seconds before
22 I did it, again. I watched Mr. Reed inhale the
23 medicine a second time.

24 Q You didn't indicate in your records that you had
25 administered the inhaler twice, did you?

- 1 A Two puffs was what I depressed it for.
- 2 Q Okay. Did you indicate that in your report?
- 3 A No.
- 4 Q Then you indicated, quote, unquote (sic) that Mr. Reed
- 5 said, "I'm going to piss on myself."
- 6 Is that accurate?
- 7 A Yes.
- 8 Q And did he urinate on himself?
- 9 A Yes.
- 10 Q And at this time, it appears that Mr. Reed was not
- 11 coherent enough to speak in complete sentences.
- 12 Would that be accurate?
- 13 A Yes.
- 14 Q He then after urinating on himself said the word
- 15 "ambulance"; is that accurate?
- 16 A Yes.
- 17 Q What happened next?
- 18 A Shortly after saying "ambulance," his breathing which
- 19 was labored and continued to get worse, it appeared as
- 20 if he had passed out and had slumped leaning back
- 21 against my scout car.
- 22 Q When you say, "leaning back," his back is to the scout
- 23 car or his front is to the scout car?
- 24 A His back. We were standing the entire time.
- 25 Q Okay. Okay.

1 A He was with his back to the scout car.

2 Q What happens next?

3 A Also, he appeared to pass out. He leaned against the
4 scout car and slowly slid down onto the ground.

5 Q What happened then?

6 A I ended up uncuffing him while my partner,
7 Officer Carver requested EMS. I placed him on his left
8 side with his arms outstretched above his head in a
9 rescue breathing recovery position.

10 Q What happened next?

11 A After that, his breathing began to get shallower to the
12 point where Officer Carver retrieved his pocket mask
13 from his duty bag from the trunk of our scout car.

14 Q How long was that after he had appeared to have passed
15 out?

16 A Everything seemed to happen really fast from the time
17 he had appeared to have passed out until the time the
18 pocket mask was retrieved, 45 seconds, maybe.

19 Q Then what happens next?

20 A Officer Carver began -- or excuse me. Officer Carver
21 began giving rescue breaths while I began chest
22 compression.

23 Q What happened next?

24 A Officer Carthan was on the radio, updating dispatch of
25 the situation, continuously asking for an ETA on

1 medics. and we continued breaths and chest
2 compressions.

3 Q At any point, did you take his pulse?

4 A I did not.

5 Q Did anyone?

6 A I don't believe so.

7 Q And how long was it before the ambulance arrived?

8 A Maybe, ten minutes. I can't put the exact number. I
9 know, we called out over the radio the time of their
10 arrival. Show medics. on scene.

11 Q At the time you were doing CPR, and attempting -- it
12 appears, though, you were attempting to resussitate;
13 would that be accurate?

14 A Yes.

15 Q So, in your opinion, would it be accurate that he was
16 dead at that point?

17 A No.

18 Q What is your opinion as to what his status was?

19 A He was having trouble breathing. We were trying to
20 assist with oxygen and blood flow.

21 Q When did you conclude that he was dead?

22 A I did not.

23 Q Okay.

24 MS. OLMSTEAD: Objection.
25

1 BY MR. SANDERS:

2 Q At any point, did anyone make a conclusion on the scene
3 that he was dead?

4 A No.

5 Q Did you perform CPR and mouth-to-mouth resuscitation up
6 until the time the ambulance arrived?

7 A Yes.

8 Q So, that was over a period of at least, ten minutes?

9 A Correct.

10 Q And he was not responding?

11 A No.

12 Q I know, you have somewhere that you want to be. Give
13 me one second. I may be done.

14 (At 11:49 a.m., break was taken.)

15 The vehicle was ultimately searched; is that
16 accurate?

17 The red charger?

18 A Yes.

19 Q Who conducted that search?

20 A I believe, evidence techs and Homicide's Task Force.

21 Q And what was the purpose for doing that?

22 A To inventory everything, to observe the scene.

23 Q For what purpose?

24 A To scene preservation for reports to document
25 everything.

1 Q Then why would you want to do that, Officer?

2 A Lawsuits.

3 Q For lawsuits?

4 A For the court.

5 Q That's the only basis that you preserved the scene, to
6 protect yourself from lawsuits?

7 A No, but property in the vehicle.

8 Q What do you mean by that?

9 A Any high valuable belongings, to insure there is no
10 theft. When we tow a vehicle, we do an inventory
11 search.

12 Q Aren't you also attempting to preserve evidence?

13 A That's correct.

14 Q Okay. And what would be the purpose of preserving
15 evidence?

16 A So, it would -- could be reviewed later.

17 Q For what purpose?

18 A Possible litigation or trial.

19 Q And what happens if you don't preserve evidence?

20 MS. OLMSTEAD: Objection. Are we --
21 foundation, here?

22 Are we -- What are we saying?

23 For purposes of a lawsuit, or are we asking for
24 purposes of a -- of -- well, let's just say "a trial".

25 Can we just be more specific, here, at least?

1 These questions are so generic.

2 BY MR. SANDERS:

3 Q I asked if he was a Police Officer. If he does not
4 preserve the evidence pursuant to a stop, what happens?

5 MS. OLMSTEAD: For purposes of what?

6 MR. SANDERS: Well, that's what I am trying to
7 find out from him. He is the officer. I'm trying to
8 be educated.

9 BY MR. SANDERS:

10 Q You said, you preserve evidence.

11 My question is, what happens if you don't
12 preserve evidence?

13 A It could potentially be damaged, lost.

14 Q I'm sorry. Can you explain your answer?

15 My question is if you -- if there is evidence
16 on the scene, and you do not preserve it, what happens?

17 A It could be lost. I'm not sure how to further explain
18 that.

19 Q It could be lost. Okay. And it could also mean that
20 your lawsuit gets dismissed, right?

21 You don't have sufficient evidence for a
22 criminal trial if there is a criminal trial.

23 Would you agree with all of that?

24 A I can agree.

25 Q All right. The purpose of the stop or the initiation

1 of the stop was the front driver's window, correct?

2 A Correct.

3 Q All right. And you say that, that window was in
4 violation of a civil infraction, correct?

5 A Correct.

6 Q All right. Was that evidence preserved?

7 MS. OLMSTEAD: Objection; calls for
8 speculation. He testified that the evidence --

9 MR. SANDERS: Now, you are testifying for him.

10 MS. OLMSTEAD: -- that the evidence techs --
11 I'm NOT testifying for him. I'm just missing my
12 objection.

13 MR. SANDERS: If he knows, he knows. If he
14 doesn't, he doesn't. He can answer the question. He
15 is a big boy. Excuse me. I don't mean that
16 offensively.

17 THE WITNESS: Thank you.

18 MS. OLMSTEAD: Let me finish my objection
19 before you answer the question. -- testified to the
20 evidence techs.

21 MR. SANDERS: His testimony is on the record,
22 Counsel.

23 MS. OLMSTEAD: Therefore, my objection.

24 MR. SANDERS: Now, you are testifying for him.

25 MS. OLMSTEAD: My objection is on the record.

1 Go ahead.

2 THE WITNESS: Repeat your question after. I'm
3 sorry.

4 BY MR. SANDERS:

5 Q If I can remember the question at this point, the
6 question is as it relates to the front driver's side
7 window.

8 That was the basis for the stop, correct?

9 A Correct.

10 Q My question is, was that evidence preserved?

11 A I can't answer that.

12 Q Okay. The photos that were provided to me, I'm going
13 to show you what has previously been marked as
14 Exhibit #3 at Officer Carthan's deposition.

15 Do you recognize that photo?

16 A That appears to be the vehicle that Mr. Reed was
17 driving.

18 Q And in that photo, the windows are all rolled down,
19 correct?

20 A Correct.

21 Q And I was provided a litany of photos with the windows
22 rolled down.

23 Now, do you know of any photos that the Detroit
24 Police preserved as it relates to the basis for the
25 stop with the windows rolled up?

1 A I don't know of --
2 Q Okay.
3 A -- to answer your question.
4 Q And how long were the evidence techs at the scene?
5 A Maybe -- I can't even answer that.
6 Q They took a ton of photos?
7 A Correct.
8 Q They took a ton of things into the vehicle, into their
9 possession?
10 A Yes.
11 Q They marked all of these things?
12 A Yes.
13 Q And they never preserved the evidence that was the
14 basis for the stop?
15 A Well, the windows were down, because I told him to put
16 the windows down, and if they took the pictures with
17 the windows down, that's because it was preserved, sir,
18 the way it was when they got there.
19 Q All right. But we don't have evidence of the basis of
20 the stop, correct?
21 MS. OLMSTEAD: Objection. Again, he is --
22 lacks personal --
23 BY MR. SANDERS:
24 Q Don't you think that would be important to get to see
25 the windows?

1 MS. OLMSTEAD: Lacks personal knowledge.

2 THE WITNESS: I saw the windows.

3 BY MR. SANDERS:

4 Q I understand that.

5 A And that would be testimony for my self-infraction.

6 Q I understand that.

7 How can we confirm that?

8 A You have to see the video.

9 Q Can you confirm that from the evidence that you took
10 into your possession?

11 MS. OLMSTEAD: Objection. States facts not in
12 evidence. He did not take that into his possession.
13 The scene was preserved by evidence techs.

14 BY MR. SANDERS:

15 Q By the City of Detroit?

16 MS. OLMSTEAD: He is not the City of Detroit,
17 last thing I checked.

18 Go ahead.

19 BY MR. SANDERS:

20 Q As a representative of the City, did you ever
21 communicate to anyone what you thought was evidence as
22 relates to your stop?

23 A No. I explained to Homicide the basis for the stop and
24 the event.

25 Q Okay. Was Homicide the one that took the evidence into

1 possession?

2 MS. OLMSTEAD: Objection; asked and answered.

3 He already said, evidence techs; not Homicide.

4 BY MR. SANDERS:

5 Q All right. So, did Homicide communicate with the
6 evidence techs, or do you know?

7 MS. OLMSTEAD: Objection, lacks personal
8 knowledge.

9 How would he know?

10 BY MR. SANDERS:

11 Q Let him answer his question. Maybe, he does know.

12 Now, you are testifying for him, Counsel. The
13 objection is foundation.

14 MS. OLMSTEAD: I'm going to be going back and
15 forth with you. You don't get to tell me --

16 MR. SANDERS: If you are going to testify,
17 raise your hand and be sworn in. I --

18 MS. OLMSTEAD: You don't get to tell me what
19 my objections are.

20 MR. SANDERS: Let him testify.

21 BY MR. SANDERS:

22 Q Do you know if Homicide communicated with the evidence
23 techs?

24 MS. OLMSTEAD: That's not the proper question.
25 If you ask your questions properly, I won't

1 have to make my objections.

2 MR. SANDERS: There is a breakdown in
3 communication. That's why we don't have a photo of the
4 window that led to the stop.

5 MS. OLMSTEAD: Objection; states facts not in
6 evidence.

7 MR. SANDERS: I have nothing further.

8 THE WITNESS: I don't know.

9 (At 12:06 p.m., deposition concluded.)

10 - - -

11 CERTIFIED SHORTHAND REPORTER (CSR)

12 State of Michigan)
13):SS
14 County of Wayne)

15 I certify that this transcript, consisting of
16 52 pages is a complete, true, and correct record of the
17 testimony of POLICE OFFICER TRACY MORENO held in this case
18 on January 9, 2019.

19 I also certify that prior to taking this deposition,
20 POLICE OFFICER TRACY MORENO was duly sworn to tell the
21 truth.

22 February 17, 2019

23 /s/ Shalaan K. Fisher
24 SHALAN K. FISHER CSR-2284
25 Certified Shorthand Reporter
Notary Public for the County of Wayne, MI
(Acting in the County of Wayne, MI)
My Commission Expires: 5/7/19

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